IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

MISC. PETITION NO. 11 OF 2007

IN

ARBITRATION PETITION NO. 470 of 2002

Dharamdas Vanmalidas Sanghavi .. Petitioner

versus

Lalitkumar Vanmalidas Sanghavi & ors.. Respondents

...

Mr.Uday Warunjikar for the petitioner

Mr.Sanjay Jain i/b Dhruve Liladhar & Co. for the respondents.

CORAM : D.G. KARNIK,J.

DATED : 22nd January 2007.

P.C.:

1. This application is made by the petitioner for appointing her as an agent of the Court Receiver in respect of flat no.312, Vallabh Bhavan, Vile Parle (hereinafter referred to as 'the said flat').

2. The petitioner and respondent no.1 are real

brothers and respondent nos.2 to 4 are the legal heirs of their third brother Daulatram. The petitioner, the respondent no.1 and Daulatram were carrying on business in partnership in the name and style of M/s.Sanghavi Brothers (hereinafter referred to as 'the said firm'). The firm was dissolved by a notice of dissolution. In view of the agreement of arbitration contained in the partnership deed the Arbitration Petition no.470 of 2002 was filed by the respondent no.1 under section 9 of the Arbitration and Conciliation Act, 1996 (for short "the Arbitration Act") for appointment of a Court Receiver of the assets and properties of the said firm pending the arbitration proceedings. By order dated 31st October 2002 this Court (Coram :Dr. D.Y. Chandrachud, J) allowed the Arbitration Petition and appointed the Court receiver as the receiver of the assets and properties of the partnership, including the leasehold property bearing plot no.240, TPS II, Vile Parle, House no.55A - 56, admeasuring 3430 sq.yards and the said flat which was stated to be used as an office of the said firm. The order of appointment of a court receiver was confirmed the Division Bench in Appeal No.1118 of 2002. Special Leave Petition against the order of the Division

Bench was also dismissed by the Supreme Court.

3. When the Court Receiver attempted to take possession of the said flat, he was obstructed by the petitioner. The Court Receiver therefore submitted his reports and sought further directions. By the orders dated 17th November 2006 and 15th December 2006,this Court (Coram Dr.D.Y. Chandrachud, J) directed the Court Receiver to take symbolic possession of the said flat because the petitioner wanted to make an application before the Arbitration Court for appointing him as an agent of the Court Receiver. The Court thereupon directed symbolic possession to be taken at the first instance with liberty to the petitioner to the Court hearing Arbitration Petitions and in the event no orders were passed by the Court within six weeks, the receiver would take actual possession of the said flat. Review Petition no.57 of 2006 filed by the petitioner for review of the order dated 15th December 2006 was also dismissed by this Court on 22nd December 2006. Thereafter, the petitioner moved the vacation Judge on 29th December 2006 which only extend the time till 12th January 2007 for making the application before the Arbitration Court. Accordingly, this petition

has been filed before the Arbitration Bench of the Court for appointment of the petitioner as an agent of the receiver.

4. I have heard counsel for the petitioner and respondent no.1. Respondent nos.2 to 4 were not present at the time of hearing of the receiver's report and when the directions referred to above were given by the court. Hence, issuance of notice to respondent nos.2 to 4 is dispensed with.

5. Mr.Jain, learned counsel for the respondent no.1 strongly opposed the appointment of petitioner as an agent of the receiver. He submitted that receiver was not allowed to take possession of the suit property and the respondent was assaulted when he had accompanied the court receiver who had gone for taking possession. He submitted that the conduct of the petitioner was such as to disentitle him to be appointed as an agent of the receiver. In the alternative he submitted that if at all the court was inclined to appoint the petitioner as an agent of the receiver, there should be no relaxation to the usual terms as to the security and payment of the royalty. This was especially so because the petitioner who was

a partner in charge of the assets of the firm including the said flat; must account for the use and occupation of the said flat.

6. It is true that conduct of the petitioner is not noteworthy. Initially before the arbitrator, he did not dispute that the suit flat was an asset of the partnership firm. However, subsequently it was contended that the suit flat was not an asset of the firm. That contention was raised for the first time before the court when it was considering the receiver's report no.125 of 2006 in Arbitration Petition no.470 of 2002. In paragraph no.7 of its order dated 17th November 2006, this court has specifically noted that the petitioner had not taken up the defence that the said flat was not an asset of the partnership firm and has rejected the contention. Yet, the same contention was attempted to be raised today before me also, by inviting my attention to the agreement of purchase of the said flat dated 27th November 1977. The petitioner cannot raise this contention in view of the fact that the contention was never raised when the receiver was appointed and when it was tried to be raised for the first time at the time of considering what court receiver's report,

the same was specifically rejected by this court.

7. Ordinarily, when a court receiver is appointed of a property, the court receiver is expected to take physical possession of the property especially when the property is in possession of any of the parties to the litigation. The suit property is in possession of the petitioner who was a party to the litigation and hence there can be no hindrance for taking physical possession of the property. Learned counsel for the petitioner however submitted that petitioner is very old aged 76 years and is ailing. He submitted that today he is hospitalised. He is residing in the suit flat and has no other premises for his residence. If he is physically dispossessed at this stage, his life would be in danger. He therefore prayed for mercy and humanitarian approach for protecting the possession. In my view, the petitioner can be appointed as an agent of the receiver subject to the petitioner furnishing satisfactory security for handing over the possession in the event he is required to do so by an order in the arbitration proceedings and also subject to payment of royalty without relaxation of the usual terms.

8. Learned counsel for the respondent submits that it takes unusually long time for the court receiver to fix the royalty and in the mean while, the petitioner is enjoying the possession of the said flat for a period of more than four years without payment of any farthing and therefore this court should fix interim royalty till the receiver fixes the royalty after hearing the parties. On being asked as to what would be the approximate rent of the said flat, the petitioner through his counsel stated that he was not aware of the same. Counsel for the respondent however submitted that a flat of about 500 sq.ft. in the same locality has been given on leave and licence basis by the respondent on licence fee of Rs.12,000/- per month. The flat in question, according to the receivers report, is 700 sq.ft. In the circumstances, it would be appropriate to fix interim royalty of Rs.15,000/- per month for the said flat pending the fixation thereof by the court receiver.

9. Accordingly, petitioner is appointed as the agent of the court receiver subject to the following conditions: The petitioner shall enter into the

usual tenancy agreement with the receiver within eight weeks. The petitioner shall pay monthly royalty and shall furnish security security to the satisfaction of the court receiver which is the usual practice of the court receiver. Till the court receiver fixes the royalty upon hearing the parties, the petitioner shall pay to the court receiver interim royalty at Rs.15,000/- per month from 1st November 2002 (i.e. from the day following the date of appointment of court receiver) till the receiver fixing the royalty. After the receiver fixes the royalty the difference, if any, in the royalty fixed by the court receiver and the royalty till then paid by the receiver shall be adjusted and the balance payment if any shall be made by the petitioner within eight weeks thereof.

10. The petitioner shall pay the arrears of interim royalty within 16 weeks and shall pay monthly royalty every month on or before 10th day of the month. In the event the petitioner fails to pay arrears of royalty within 16 weeks or fails to apply any of the terms and conditions herein mentioned, the court receiver shall take actual physical possession of the suit premises forthwith.

11. Since this order is passed without notice to respondent nos.2 to 5, they shall have a liberty to apply for the modification of the order in the event they feel aggrieved.

D.G. KARNIK, J